



# Limited welcome: protecting the media from hostile foreign influence

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## Summary

- The coronavirus pandemic has demonstrated that the media in democratic countries is indeed a strategic industry, as it serves as the principle means of communication between governments and citizens. Yet it is also during a crisis that hostile foreign powers can use the same channels of communication to influence narratives, spread disinformation and contribute to panic or social unrest.
- Hostile foreign influence to change the public discourse can be effective, as it has so far gone largely unnoticed by both European governments as well as society at large. The problem has not yet been acknowledged, quantified and properly responded to.
- Legislation treating the media as a strategic industry is either missing or exists in a rudimentary form.
- Based on the MapInfluenCE data, it is evident that a change in media ownership structures can easily lead to the eradication of critical voices on authoritarian power and, together with (self-)imposed censorship of journalists, can change the perception of a foreign power.
- Protecting the media from hostile foreign influence requires a level of eclecticism when adopting different safeguards. Possible layers of protection include restrictions on foreign ownership of media, the possibility of limiting state support to media owners, avenues for banning media cross-ownership, dealing with a concentration of the media through antitrust regulations, the application of investment screening regulations, the prevention of advertisements being used as a tool to influence media content, anti-SLAPP legislation, and the depoliticization of broadcasting councils which oversee media.
- None of the measures, however, are a panacea for media freedom - each of them tackles a different kind of media vulnerability. Due to a wide variety of vulnerabilities, protecting the media needs a multi-faceted approach.



## Recommendations

- An effective protection of the media requires a mental shift of the relevant stakeholders towards understanding the sources of vulnerability of the media and towards getting acquainted with legal mechanisms which could protect the media from hostile influence.
  
- Further research of country-specific situations and available legal tools is the necessary first step in addressing the issue. Raising awareness of the risks stemming from allowing hostile foreign actors to influence the media should follow.
  
- At the EU level, it would be prudent to create or to use already existing grant schemes and mechanisms to support journalists, who are already active in researching and publicizing hostile foreign influence operations. The EU should also be more proactive in strengthening its own democratic narrative inside the Union, and in ensuring freedom of the media and journalists.
  
- The EU investment screening mechanism cannot be considered an effective tool in protecting European media as it only maps and informs on the scale of media acquisitions. It is thus necessary to incentivize countries to draft national investment screening mechanisms, covering not only traditional but also online media.
  
- To prevent abuse of advertising space for the spreading of propaganda, publishers should adopt safeguards which would allow editors to review advertising content for elements of propaganda and disinformation. This should be done especially when ad space is purchased by foreign governments or their interlocutors.
  
- Another significant precondition for an effective response to hostile foreign influence on the media is to ensure that broadcasting councils which are tasked with protecting the media are not susceptible to political pressure. Councils also need a clear methodology which would enable them to evaluate the broadcasting in an impartial and transparent way.
  
- In order to prevent the abuse of legal procedures for the coercion of journalists by hostile foreign actors, democratic governments should adopt effective anti-SLAPP regulations which would impose additional burdens on the plaintiff whenever lawsuits concern journalists. In the EU, the legal protection should be spearheaded by the Commission to harmonize protection levels across the union.



## Introduction

The coronavirus pandemic has clearly demonstrated that the media in democratic countries is indeed a strategic industry. It is in times of crisis that the population increasingly turns towards the media as a source of primary information. The media then serve as a principle means of communication between governments and citizens. Yet it is also during such times that hostile foreign powers can use the same channels of communication to influence narratives, spread disinformation and contribute to panic or social unrest.

The issue of media protection is very broad, starting with the protection of journalists themselves through the protection of their sources, to protection of media freedom in general. This paper, however, does not deal with attacks against the freedom of the media, as witnessed even in democratic countries and, sadly, often conducted by democratically elected leaders.<sup>1</sup> The focus of the paper lies solely in the question of protecting the media from hostile foreign influence. Despite the realization that hostile influence over the media can seriously undermine the security of the countries concerned, in a number of them, even in those dealing with imminent threats of hostile foreign influence the legislation treating the media as a strategic industry is either missing or exists in a rudimentary form.

This policy paper aims to contribute to a mental shift of the relevant stakeholders towards understanding the sources of vulnerability of the media and towards getting acquainted with legal mechanisms which could protect the media from hostile foreign influence. It specifically discusses **restrictions on foreign ownership of media, the possibility of limiting state support to media owners, avenues for banning media cross-ownership, dealing with a concentration of the media through antitrust regulations, the application of investment screening regulations, the prevention of advertisements being used as a tool to influence media content, anti-SLAPP legislation, and the depoliticization of broadcasting councils which oversee media.** The paper draws mainly from the experience of the Czech Republic and Slovakia, yet also discusses practices from other countries and provides inspiration for policy makers on ways to curb hostile foreign influence in the media.

Throughout the paper, the People's Republic of China (PRC or China) is used as an example of a hostile foreign power which attempts to influence the media in various parts of the world, including in Central and Eastern Europe.<sup>2</sup> Certainly, China is just one example of an illiberal state attempting to influence the media, yet it was considerations regarding China's influence that led to the adoption of some of the strictest measures for curbing hostile foreign influence in the media by the European Union, such as the creation of the EU investment screening mechanism and subsequent national screening legislations stemming from the regulation. The Chinese party-state recognizes the value of controlling foreign media as tools for channeling Chinese power by fostering a positive image of the country, especially on contentious issues like territorial conflicts or human rights.<sup>3</sup> China influences

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<sup>1</sup> A Freedom House report points to a global decline in democracy which in turn affects the freedom of the media. "The erosion of press freedom is both a symptom of and a contributor to the breakdown of other democratic institutions and principles, a fact that makes it especially alarming." See Sarah Repucci, *Media Freedom: A Downward Spiral*. Freedom House, 2019, <https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral>.

<sup>2</sup> e.g. Ivana Karásková, "How China Influences Media in Central and Eastern Europe", *The Diplomat*, November 19, 2019, <https://thediplomat.com/2019/11/how-china-influences-media-in-central-and-eastern-europe/>.

<sup>3</sup> Matej Šimalčík. *Stories about Middle Kingdom: Case Study of the Slovak Perception of China and its Implications for the Security Policy*. In Róbert Ondrejcsák, Peter Bátor, Richard Q. Turcsányi, Michal



media content by promoting the Chinese Communist Party's narratives, suppressing critical voices, and managing content delivery systems.<sup>4</sup> Attempts to influence media content abroad include mergers and acquisitions of media, pressure on acquired media to avoid China-critical coverage, denying advertising to punish China-critical media, placing advertorials to media outlets, hiring PR companies to facilitate the penetration of China's narratives to the media, or the intimidation of journalists whose articles alleged to be 'anti-China' by sending them pre-litigation notices.

Some of the hostile foreign actors' attempts to influence media can be mitigated by other than legal measures (e.g. by publishing houses updating ethical codes and increased transparency in accepting articles commissioned by PRC embassies and/or transparency in labeling of sponsored content in media; ethical standards including disclosures of the source of funding for journalists' trips abroad, etc.). Others can be dealt with by stricter enforcement or upgrading of the current legislation or an introduction of new legal measures.

It must be stressed, that the sole purpose of this report is only to offer solutions for preventing abuse of media by hostile foreign actors, especially authoritative regimes and their proxies. In no way is this meant to discourage meaningful relationships between media and foreign partners and investors, especially those from other democratic countries. Foreign partnerships are often a prerequisite for reporting on stories which involve multiple jurisdictions, and are proving increasingly common in a globalized world.

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Mochťak (eds.): Panorama of Global Security Environment 2017-2108: The Central European Perspective, STRATPOL, pp. 343 - 360.

<sup>4</sup> Sarah Cook, "The Implications for Democracy of China's Globalizing Media Influence", Freedom House, 2019, <https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral>.



## To include or not to include, that is the question

A definition of the media which allows for effective enactment of the tools to protect media freedom and information plurality is rather tricky. Applying a narrow definition could lead to situations in which certain types of media fall outside the legislation that was supposed to protect them. On the other hand, adopting too broad a definition can result in restrictions applying even in cases that the legislators had no intention of regulating in the first place. Also, using generic language can result in opening up wide grounds for interpretation, while casuistry requires frequent amendments to the laws in order to keep them in touch with the rapidly evolving media industry.

Traditionally, media regulation has focused on the regulation of television and radio broadcasting and print. However, with the growing importance of online media, the question arises whether and how these should be regulated without disproportionately infringing on freedom of information.

A 2018 study commissioned by the Council of Europe found that only 6 EU member states regulate online/electronic media in some form.<sup>5</sup> Not having a point of reference for online media can prove a problem for states with a less developed or up-to-date regulatory environment in trying to come up with a suitable framework for which online media ought to be regulated and protected from hostile foreign influence. This specific problem - the inability to legally regulate online/electronic media - was made clear to Czech lawmakers and NGOs focusing on media protection during the drafting of the investment screening regulations. Effectively, online media - which often have a higher readership than traditional media - were not included in the draft legislation, citing the absence of a definition of online media in Czech legislation and a subsequent need to update the media regulations. The interviews with media practitioners in the Czech Republic, however, revealed that journalists and media analysts do not support amendments of the obsolete media legislation for fear that the current government may use the legislation to curb their independence.<sup>6</sup> Indeed, many interviewees claimed that they see a similarity between how governments and hostile foreign actors operate, using the same avenues for influencing the media. Effective protection of the media through regulations thus relies on the political will of policy makers to close the security loopholes in a country's media legislation and in media practice, and depends on the regulated industry's trust towards the government.

## What is enough? Restrictions on foreign ownership of the media

While there are a number of legal measures which can be used to curb hostile foreign influence over the media, there are two tools which directly focus on dealing with foreign investors in media - restrictions on foreign ownership of media and investment screening mechanisms in cases where the media are included amongst protected industries.

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<sup>5</sup> These states include Austria, Croatia, Finland, Hungary, Latvia, and Slovenia. See Jean-Francois Furnemon, "Media Regulatory Framework and the Online Media: The Macedonian Case", Council of Europe, 2018, <https://rm.coe.int/media-regulatory-framework-and-the-online-media-the-macedonian-case/16808c9c76>.

<sup>6</sup> Closed-door roundtable on protection of media from hostile foreign influence organized by MapInfluenCE and Association for International Affairs with support of Heinrich Böll Foundation, December 4, 2019, Prague, Czech Republic.



Investment screening is the less restrictive of the two types, since it permits the investor to carry on with the investment, while specifying the percentage of investment which triggers the screening (debated below). The other, more restrictive mode is an outright ban on foreign ownership, either complete or from a set percentage, with the former case used less often than the latter. Amongst OECD countries, Israel features one of the strictest environments for foreign ownership of the media. A license may not be granted to a non-resident applicant in which a foreign government holds shares, unless the Minister of Communications authorizes an indirect holding in the licensee of up to 10% by such an applicant. The country also limits investment in commercial television and regional radio, where at least 51% of the controlling interest in the concession must be held by nationals who are residents of Israel.<sup>7</sup> Until 2014, Mexico banned foreign investment in radio and television broadcasting. Since then it has made it possible for foreign investors to obtain a concession for broadcasting services under the condition that a prior favorable opinion from the National Commission of Foreign Investments is granted.<sup>8</sup>

Other countries define a percentage of allowed foreign ownership. Among OECD countries, Chile limits the granting and use of concessions for radio broadcasting to enterprises with no more than 10% foreign ownership. Greece limits ownership by non-residents to no more than 25% of the capital of a television (including cable television) company and 49% of the capital of a radio broadcasting company. Italy limits majority participation or controlling interests in companies that publish daily newspapers and periodicals and regulates license granting to audio-visual communications enterprises with their headquarters in a non-EU member country.<sup>9</sup> Also the Republic of Korea regulates news agencies if foreign investors hold at least 25% of the share capital, enterprises publishing newspapers if foreign investors hold at least 30% of the share capital, enterprises publishing periodicals if foreign investors hold at least 50% of the share capital and broadcasting companies, except if foreign investors hold 33% or less of the share capital of a satellite broadcasting operator and if foreign investors hold 49% or less in a program provider that is not engaged in multi-genre programming or news reporting, in a cable system operator, or in a signal transmission network business operator. Similarly Norway, Poland, Spain, Switzerland, Turkey, the United Kingdom and the US to varying degrees regulate investment in media, especially broadcasting, from non-residents.<sup>10</sup>

As evident from the list above, specific restrictions of foreign ownership are fairly widespread - and, in some cases, rather strict - across the democratic world. Yet an outright ban on media ownership for country's non-residents not only interferes with liberalization processes but in some countries which backslide on democracy, can lead to solidifying the government's grip over the country's media. Moreover, the limitation of media ownership by a set percentage still leaves open the issue of investors with potentially subversive motives.

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<sup>7</sup> All data from "Annex B Reservations to the Code of Liberalisation of Capital Movements", OECD Code of Liberalisation of Capital Movements, OECD, 2019, <http://www.oecd.org/daf/inv/investment-policy/Code-capital-movements-EN.pdf>.

<sup>8</sup> "Report on G20 Investment Measures taken between 2 April 2009 and 15 October 2019," OECD & United Nations UNCTAD, <http://www.oecd.org/daf/inv/investment-policy/G20-Investment-Measures-Consolidated-Report.pdf>.

<sup>9</sup> "Annex B Reservations to the Code of Liberalisation of Capital Movements", OECD Code of Liberalisation of Capital Movements, OECD, 2019, <http://www.oecd.org/daf/inv/investment-policy/Code-capital-movements-EN.pdf>.

<sup>10</sup> Ibid.



## Looking for the ‘good foreigner’: the promise and limitations of investment screening mechanisms

The second type of regulation which directly leads to curbing hostile foreign influence is investment screening. Similarly to restrictions imposed on foreign ownership, investment screening thresholds are based on the percentage share. Eight out of the twenty OECD countries examined by Rhodium Group had some investment screening measures in place.<sup>11</sup> The threshold for triggering an investment screening procedure varies, with some countries apparently considering the media to be a critical sector. For example Australia, due to its vast experience with Chinese influence in the media, has one of the strictest set of regulations, setting the threshold at 5%, for all foreign persons to apply for and receive foreign investment approval to make an investment in the media sector, regardless of value.<sup>12</sup> Germany included the media in its investment screening process in 2018, as part of critical infrastructure. The move lowered the threshold to 10%, which sets an obligation on the investor to notify the regulatory authority prior to the investment.<sup>13</sup>

At the EU level, an investment screening regulation was adopted in 2019. The move was mainly motivated by concerns about Chinese investment coming into Europe. The influx of FDI from China started after the global financial crisis and targeted mostly France, Germany and the United Kingdom. Only a small proportion of Chinese FDI was absorbed by Central and Eastern Europe.<sup>14</sup> Although the volume and direction of Chinese foreign investment has fluctuated over the years, it has covered the infrastructure, transportation, automotive, energy and financial services sectors, information and telecommunications technology and also media. The amount of Chinese investments into media in Europe was 2.3 billion USD between 2008 and 2018.<sup>15</sup>

The unrestricted inflow of Chinese investment and the openness of European economies clearly contrasted with the problems and barriers experienced by European companies seeking to operate in China. European companies have long warned their governments that they are being pushed out of the Chinese market, where the party-state prefers and subsidizes Chinese companies, and called for a level playing field. In the context of the continuing and growing criticism of China’s approach to foreign companies, some EU governments have begun to realize that China’s acquisitions in Europe - especially in modern technologies - may jeopardize the global operations and competitiveness of European companies in the future. In addition, concerns about China’s economic infiltration into Europe intersected with uneasiness at the direction of Chinese domestic and foreign policy following the ascent of Xi Jinping, the Chinese Communist Party General Secretary and President, and the PRC’s growing assertiveness in international politics. Chinese acquisitions began to be seen as a tool to covertly promote Chinese interests in Europe and possibly influence the behavior of European member states.

<sup>11</sup> Interview with Agatha Kratz, Rhodium Group, February 2020, online.

<sup>12</sup> “Guidance Note 25”, Australian Government - Foreign Investment Review Board, July 1, 2017, [https://cdn.tspace.gov.au/uploads/sites/79/2017/07/25\\_GN\\_FIRB.pdf](https://cdn.tspace.gov.au/uploads/sites/79/2017/07/25_GN_FIRB.pdf).

<sup>13</sup> “Chinese walls? Germany reinforces the control of foreign investments”, Hogan Lovells, July 17, 2017, <http://ehoganlovells.com/rv/ff00320035465243cebc87af634e9b2464845da1>.

<sup>14</sup> Thilo Hanemann, Mikko Huotari, Agatha Kratz. Chinese FDI in Europe: 2018 Trends and Impact of the New Screening Policies. Berlin: MERICS a Rhodium Group, 2019. [https://www.merics.org/sites/default/files/2019-03/190311\\_MERICS-Rhodium%20Group\\_COFDI-Update\\_2019.pdf](https://www.merics.org/sites/default/files/2019-03/190311_MERICS-Rhodium%20Group_COFDI-Update_2019.pdf).

<sup>15</sup> Andre Tartar, Mira Rojanasakul, Jeremy Scott Diamond, “How China Is Buying Its Way Into Europe”, Bloomberg, April 23, 2018, <https://www.bloomberg.com/graphics/2018-china-business-in-europe/>.





In his speech on the State of the Union in 2017, the President of the European Commission, Jean-Claude Juncker, stated very openly: “Let me say once and for all: we are not naïve free traders. Europe must always defend its strategic interests. This is why today we are proposing a new EU framework for investment screening. If a foreign, state-owned, company wants to purchase a European harbor, part of our energy infrastructure or a defense technology firm, this should only happen in transparency, with scrutiny and debate. It is a political responsibility to know what is going on in our own backyard so that we can protect our collective security if needed.”<sup>16</sup>

At an unprecedented pace, considerations about the screening mechanism were translated into European legislation when Regulation 2019/452 of the European Parliament and of the Council (EU) entered into force in April 2019, establishing a framework for scrutinizing foreign direct investment in the EU. The framing of the concept of screening is based on political and security concerns and pursues the interest of maintaining “security and public order”. The regulation is to be implemented by the Member States by 11 October 2020.<sup>17</sup> The new regulatory framework will affect investors from third countries (i.e. countries outside the EU). Sectors where investment should be mapped include critical infrastructure, critical and dual-use technologies, security of critical supply (e.g. raw material or food security), access to sensitive data, as well as investment in the media, reflecting Europe’s growing awareness of methods of conducting hybrid warfare. The EU thus responded to the efforts of foreign actors (Russia, China, but also Iran, Saudi Arabia, etc.) to influence public opinion, social discourse and political and economic elites in pursuit of their interests, including efforts to influence elections through disinformation and fake news.

The aim of the European regulation is to create a cooperation mechanism in which the Member States and the Commission are able to exchange information on specific investments and to be notified when these raise concerns. The framework also allows the Commission to take a position if an investment threatens security or public order in several Member States or if it could influence a project or program that is of interest to the EU as a whole. The regulation therefore defines the regulatory framework, but the final word on whether or not a particular investment transaction should be allowed on their territory remains within the competence of the Member States. It is therefore conceivable for a Member State to decide not to follow the position of the European Commission, not to succumb to pressure from other Member States and to allow a problematic investment.

It should be noted that some Member States (e.g. Germany, Austria, France, Finland, Italy, Lithuania, Latvia, Poland, Portugal, Spain, the United Kingdom) have previously introduced foreign investment screening into their legislation. Other countries (e.g. Czech Republic) have only considered such legislation, but have not yet introduced a legal instrument for screening investments, while some others (e.g. Slovakia) have not announced the drafting of their national investment regulation law. The regulation reflects the heterogeneous situation in various EU Member States and sets out requirements for what a mechanism for examining foreign investment should look like for countries that either already have the mechanism and will review it, or are in the process of drafting one. The very existence of an EU-wide regulatory framework obviously puts strong pressure on the establishment of national mechanisms.

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<sup>16</sup> “State of the Union 2017 - Trade Package: European Commission proposes framework for screening of foreign direct investments”, European Commission, September 14, 2017, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_3183](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3183).

<sup>17</sup> “Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union”, Official Journal of the European Union, March 21, 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R0452&from=EN>.



In the Czech Republic, the EU regulation was followed by the government's decision to establish a Czech investment screening mechanism. Some of the actors involved in drafting the legislation were skeptical regarding the inclusion of the media, citing numerous problems starting with the definition of the media and the political sensitivity of the issue itself, they downplayed the necessity to protect the media or even claimed that the media would be protected anyway through (unspecified) measures which could be wielded by security services in the event that major media investment from a hostile foreign country was uncovered.<sup>18</sup> Other actors, led by the Ministry of Foreign Affairs, pointed to the increased number of hybrid operations and disinformation campaigns targeting, among others, the Czech population.

The threat, however, is not only limited to hybrid operations. In the case of the acquisition of media by foreign investors with links to undemocratic regimes, a number of other threats may arise, from restrictions on journalists' freedom to cover "sensitive" cases to the publisher's influence over media content. Acquisitions can lead to journalists' censorship or self-censorship. Investors can also influence how media inform about foreign powers, thereby reducing critical voices and creating a deceptively positive image. In general, media owned by foreign investors can be misused as a tool for disseminating the views of foreign governments, and their activities can jeopardize the foreign policy consensus and the European and Transatlantic anchorage of the Czech Republic.

A study from the MapInfluENCe project<sup>19</sup> showed that this is not a hypothetical consideration in the Czech environment. In 2015, the nominally private Chinese company CEFC<sup>20</sup> acquired a stake in Empresa Media, securing access to one TV station (*TV Barrandov*) and a number of magazines (e.g. *Týden*, *Instinkt*). The research uncovered that the acquisition had a profound impact on the company's media outlets' discourse on China. Not only did all negative mentions of China disappear, but so even did neutral coverage, resulting in these media reporting on China only in a positive manner. Moreover, it was not only the tone of the reporting that changed, but also the composition of the covered topics. The media invested into by CEFC covered the China-led Belt and Road initiative with a frequency unparalleled by any of the other 40 analyzed Czech media outlets, both privately and publicly owned. Without any doubt, Chinese (co)ownership changed this particular set of Czech media into a conveyor of messages broadly compatible with Beijing's worldview.

The advocacy effort run by MapInfluENCe led to the media being included in the draft of the Czech investment screening regulation with a procedure even stricter than in other comparable countries where media were also included in the screening. While the general threshold for triggering a screening process in critical sectors was set to 10% (following the German model), the media has a distinct procedure where prior notification of the Ministry of Trade and Industry, responsible for the screening, is explicitly required regardless of the percentage of the investment. That is to say, any investment into a company which holds a license for nationwide radio or television broadcasting is subject to the prior notification and consultation with the ministry. During the process an ultimate beneficial owner has to be identified. The regulation also concerns investment into companies which publish periodicals, with the threshold set to a minimum

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<sup>18</sup> Authors' interviews with members of the inter-ministerial commission tasked with negotiations over the draft legislation, Prague, 2019–2020.

<sup>19</sup> Ivana Karásková, Tamás Matura, Richard Q. Turcsányi and Matej Šimalčík. *Central Europe for Sale: The Politics of China's Influence*. Prague: Association for International Affairs (AMO), 2018. [https://www.amo.cz/wp-content/uploads/2018/04/AMO\\_central-europe-for-sale-the-politics-of-chinese-influence.pdf](https://www.amo.cz/wp-content/uploads/2018/04/AMO_central-europe-for-sale-the-politics-of-chinese-influence.pdf).

<sup>20</sup> CEFC company, as it later turned out, was actually based on a Ponzi scheme. In 2019, it had to be bailed out by the Chinese state-owned CITIC.



yearly average of 100,000 copies printed per day for the last calendar year. The reasoning behind the definition lies in not focusing on the media outlets themselves and distinguishing among dailies, weeklies and media with other periodicity, but rather on protection of the publishers who own the most followed periodicals in general. However, online media were - for reasons mentioned above - not covered by the regulation.

The investment screening law entered the Czech Parliament in April 2020 and its final version is yet to be seen. When it is finally adopted, it must still face the most difficult of challenges: withstanding potential political pressures during its application.

## The right to know: ownership transparency

An important part of preventing hostile foreign influence over the media lies in improving the transparency of media ownership. In exerting influence over the media, foreign powers rarely rely on transparent ownership links and direct control of the target medium. More often than not, the influence is covert rather than overt, and the control is indirect rather than direct. To illustrate the issue, in 2015 it came to light that China Radio International (CRI) was covertly financing at least 33 foreign radio stations, which broadcast positive news on China.<sup>21</sup>

To improve the situation, the principle of transparent beneficial ownership should be implemented in relation to the media. Public and verifiable disclosure of ultimate beneficial owners, i.e. the persons which exercise the ultimate direct or indirect control over a target company, helps to better understand the concentration of power within various media networks. Knowing who may be able to exercise control over an investor is a necessary precondition to evaluating the security risk any investment into media can pose as well as to devising suitable risk-mitigation measures. Furthermore, knowing whether an investor is controlled by a government-related principal, helps to better understand the risk a hostile foreign actor can pose to media freedom and plurality. It would also be important to be able to identify and - more importantly, through identification - hold legally accountable the beneficial owner of media which spread disinformation and fake news. Though most of the paper focuses on traditional media and their protection, the readership and also the impact of a disinformation outlet could be, in reality, significantly higher.

To achieve high-level transparency of media ownership, states should mandate that every company operating media of a certain size (e.g. those that operate nationwide) publicly disclose its entire corporate structure and have it verified by an independent third party such as an attorney or notary public. This type of radical transparency regime has been implemented in Slovakia as a precondition to awarding a public tender contract. The very need for companies to disclose their ownership structures has served to discourage companies with ulterior motives that for various reasons did not want to show the true beneficiaries of their business.

Having publicly available information on media ownership would also make enforcing other media-freedom-and-plurality measures like prohibition of cross-ownership more effective. In Slovakia in 2019, it was proposed that media with a yearly turnover greater than 1 million EUR are to be covered by the beneficial ownership legislation regardless of whether they derive income from the state.<sup>22</sup>

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<sup>21</sup> "At the sharp end How China's 'sharp power' is muting criticism abroad", *The Economist*, December 14, 2017, <https://www.economist.com/briefing/2017/12/14/how-chinas-sharp-power-is-muting-criticism-abroad>.

<sup>22</sup> For the draft of the law on concentration of media see "Návrh poslancov Národnej rady Slovenskej republiky Miroslava Beblavého, Lucie Žitňanskej, Martina Poliačika, Viery Dubačovej a Alana Suchánka



Independent verification of the beneficial ownership declaration is a crucial part of the success this mechanism has achieved in Slovakia. The verification is a two-level process. Firstly, the disclosure has to be verified by an independent third-party like an attorney or notary public, who then bears legal responsibility for the veracity of the disclosure. Secondly, any person can challenge the veracity of the disclosure in a specialized court where the company whose disclosure is challenged has to prove that the information in the disclosure is indeed true.

To illustrate the success of this tool, it should be noted that thanks to the information made available in Slovakia, the Czech branch of Transparency International was able to prove the conflict of interest of the Czech Prime Minister Andrej Babiš, which in turn led to the EU Commission putting on hold all EU funding installments for the Czech Republic.<sup>23</sup> As is generally the case, transparency seems to be one of the most promising tools of guaranteeing media freedom - and, as the case of Andrej Babiš proves, not only from hostile foreign powers.

## Media cross-ownership as a challenge and risk

An increasing power concentration by a hostile foreign actor in the media industry would be devastating to media freedom and plurality. However, the problem is difficult to mitigate when the media are in the hands of domestic businesses and oligarchs. To prevent too much power over media accumulating in the hands of a single entity, Slovakia has put in place rules which can be dubbed as a media cross-ownership ban. Similar rules were in place in the US as well, however, they were stripped by the Federal Communications Commission in 2017.<sup>24</sup>

The cross-ownership ban generally precludes the same person from owning a print medium (e.g. daily newspaper or magazine) while simultaneously holding a radio or TV broadcasting license. The reasoning goes that even if a single medium falls into the hands of an oligarch or a hostile foreign agent, who in turns abuses that ownership to pursue other agendas by influencing the reporting of that medium, then the cross-ownership ban should prevent that actor from consolidating power over a bigger portion of the media market.<sup>25</sup> The regulation currently does not distinguish between traditional and new media, yet to reflect the reality of 21<sup>st</sup> century journalism, online media should be covered by this legislation as well.

If the ban is properly implemented and enforced, it can be a powerful tool in preventing the abuse of media by both domestic and foreign actors. However, its effectiveness largely depends on the political will and competence of the body enforcing it. This ties in with the need to ensure depoliticized broadcasting councils. The experience from Slovakia shows that cross-ownership bans are rather toothless when there is a lack of political will to enforce the ban due to the politicized nature of the authority tasked with enforcing it. In practice, local oligarchs were able to bypass the regulation by creating holding structures and de facto partnerships of

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na vydanie zákona o osobitných opatreniach na zabránenie neprimeranej koncentrácii vlastníctva a usporiadanie konfliktu záujmov na mediálnom trhu a o zmene a doplnení niektorých zákonov", National Council of the Slovak Republic, Parlamentná tlač 1799, November 8, 2019 <https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=7&ID=1799>.

<sup>23</sup> "Střet zájmů Andreje Babiše", Transparency International, <https://www.transparency.cz/kauzy/andrej-babis/>.

<sup>24</sup> "FCC Broadcast Ownership Rules", Federal Communication Commission, January 17, 2020, <https://www.fcc.gov/consumers/guides/fccs-review-broadcast-ownership-rules>.

<sup>25</sup> At the same time, particularly in small or medium-sized countries, even ownership of one type of media leads to significant influence over the media (and through that also public) discourse, as the case of Czech PM Babiš' ownership of print demonstrates.



legal entities so that it would appear the law was not being breached. Moreover, in specific cases cross-ownership regulation can backfire. Increasingly, the media publish different types of content (audio, visual, print) via various channels in order to generate additional revenues. While oligarchs who own media can bypass the regulation, small independent projects may face difficulties to survive if they are relegated to just one type of media.<sup>26</sup>

A fully functioning regulation clearly needs to be based on the principle of ultimate beneficial ownership. The above mentioned mandatory beneficial ownership disclosures in the media sector and fully functioning broadcasting councils would help to turn the cross-ownership ban into a truly effective tool aimed at countering a concentration of power in the hands of hostile foreign actors.

A truly radical change—and an effective additional answer to the problem of cross-ownership—would come with a prohibition of media ownership by political figures. Given the context, such a move, however, cannot be expected any time soon.

## **On your own: limiting financial ties between the media and state**

A more realistic alternative to the aforementioned radical measure would rest in expanding the already existing cross-ownership bans to cover also owners who are dependent on income from public funds, be it in the form of government - awarded contracts or state aid.

In 2019, a proposal in this vein was introduced to the Slovak Parliament by several opposition MPs.<sup>27</sup> The bill included a prohibition on any company receiving substantial amounts of public funding (over 15 million EUR in the past fiscal year or over 30 million EUR in the past 3 fiscal years) owning a stake in a media operating company with an annual turnover larger than 5 million EUR. This prohibition was based on the principle of ultimate beneficial ownership to prevent circumvention of the ban. The bill further proposed that in the case of a media owner reaching the specified criteria the owner has to either divest from the media, or adopt suitable safeguarding measures which would have to be approved by the Antitrust Office. This was seen as a compromise solution which would allow beneficial owners linked to public finance to retain their media ownership while at the same time limiting their effective control over the media and thus protecting media freedom and plurality.

Such measures could include limiting shareholder rights to access certain information, independence of the media management from shareholder orders which could impact on the independence of the newsroom, or creating a specialized oversight committee composed of independent professionals who would be tasked with monitoring whether and how the shareholder maintains the independence of the media from interference. Furthermore, the bill would have allowed the Antitrust Office to carry out an ex-post investigation into whether a media owner with substantial income from public funds abused its media ownership to interfere in media freedoms.

The proposed measure was originally aimed at domestic oligarchs who benefited from public tenders, as Slovakia was experiencing the problem of media controlled by oligarchs who influenced media coverage and public perception of their

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<sup>26</sup> Authors' interview with Ondřej Fér, former media manager and journalist, May 22, 2020, Prague.

<sup>27</sup> "Návrh zákona o osobitných opatreniach na zabránenie neprimeranej koncentrácie vlastníctva a usporiadanie konfliktu záujmov na mediálnom trhu a o zmene a doplnení niektorých zákonov", National Council of the Slovak Republic, <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=473851>.



deeds. The control of media by oligarchs was seen as a major hindrance to media fulfilling their role as watchdogs as some dubious public procurements from which their owners had benefited were uncovered.<sup>28</sup> The investment group Penta even called its media ownership a “nuclear briefcase” which it was prepared to use in order to protect its economic interests.<sup>29</sup> In spite of its domestic roots the measure could also serve the objective of protecting the media from hostile foreign influence. In many cases, foreign direct investment is encouraged by providing incentives in the form of state aid. The aid could potentially qualify as income from public funds. In such a case, the measure would in turn preclude foreign investors who receive state aid to diversify into the media market, which then could be utilized to create a positive media environment.

In the end, the measure was not adopted, as the legislative procedure in the National Council was initiated only 3 months before the scheduled general elections. While the new government of Igor Matovič did not pledge to adopt this measure, it vowed to prepare a new regulatory framework for the media, including ownership transparency.<sup>30</sup>

## Trust the antitrust?

As far as preventing concentration of power on the media market goes, no discussion would be complete without at least a cursory look at antitrust laws and ways they can impact interference in media freedom by hostile foreign actors.

Unlike bans on cross-ownership, antitrust regulations are not targeted specifically at the media. Nevertheless, antitrust laws can provide an additional layer of protection for the media from being controlled by foreign actors, who could abuse them for other ends.

In the United States, there has been a growing discussion on whether the media should be exempt from antitrust obligations, citing the need to allow the media to consolidate resources in order to be able to continue to provide a public service as a watchdog and safeguard of democracy.<sup>31</sup> However, it should also be recognized that having only a few owners of media present on the market can lead to a narrowing of the news and opinions reported by these media.<sup>32</sup> Concentration of media ownership has been particularly problematic in the US. While in 1983 90% of the US media market was controlled by 50 companies, in 2011 the same market share was controlled by only 6 companies.<sup>33</sup>

The same logic applies to media ownership by foreign investors. Allowing investors linked to foreign authoritarian governments to achieve control over a considerable market share would be for them a major asset contributing towards achieving a higher level of discursive power.

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<sup>28</sup> Ibid.

<sup>29</sup> Vladimír Šnidl, “Médiá ako atómový kufřík: Penta po Gorile pochopila, že nemôže mať ľudí proti sebe”, *Denník N*, October 16, 2019, <https://e.dennikn.sk/1620257/media-ako-atomovy-kufrik-penta-pogorile-pochopila-ze-nemoze-mat-ludi-proti-sebe/>.

<sup>30</sup> “Programové vyhlásenie vlády Slovenskej republiky na obdobie rokov 2020 – 2024”, Government of Slovakia, <https://www.teraz.sk/download/135/programove-vyhlasenie-vlady.pdf>.

<sup>31</sup> Maurice E. Stucke, Allen P. Grunes. Why More Antitrust Immunity for the Media is a Bad Idea. *Northwestern University Law Review* Vol. 105, No. 3 (2011), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1164&context=nulr>.

<sup>32</sup> David Schultz, “Media Exemption to Antitrust laws”, Free Speech Center, [undated], <https://www.mtsu.edu/first-amendment/article/1128/media-exemption-to-antitrust-laws>.

<sup>33</sup> Ashley Lutz, “These 6 Corporations Control 90% Of The Media In America”, *Business Insider*, June 14, 2012, <https://www.businessinsider.com/these-6-corporations-control-90-of-the-media-in-america-2012-6?IR=T>.



While having control over a single medium can provide foreign authoritarians with a propaganda mouthpiece, the existence of other independent media on the market can serve to keep the propaganda mouthpiece accountable by reporting on the abusive practices linked to the media owner, or debunking any disinformation and propaganda the mouthpiece may report. On the other hand, allowing foreign investors with links to the same beneficial owners (e.g. in the case of China, the State Council) to control a large share of the media market would effectively allow them to weaponize media ownership in order to launch large scale campaigns aimed at promoting their own agenda or discouraging policy choices unfavorable to the foreign actor. In the case of China, the party-state recognizes the value of controlling foreign media as tools for channeling Chinese power by fostering a positive image of the country, especially on contentious issues like territorial conflicts or human rights.<sup>34</sup>

Bearing this in mind, it should be recognized that a fully-fledged investment screening mechanism is a more suitable tool for preventing abuse of the media by hostile foreign actors as it allows evaluation of individual investment into media on security grounds regardless of the market share. Nevertheless, the antitrust regulations provide a layer of protection, especially in cases where a country does not have an investment screening mechanism, or its mechanism does not cover the media as a strategic sector of the economy.

## Not just business: advertising as a tool of influencing media content

Though the ownership of media may be restricted in the form of a direct ban or by setting percentage limits, there are still other tools readily available for influencing media content. One of them is the threat presented to the media of losing revenue from advertising if its content is not in line with the goals of the company placing the advertisement. In fact, this measure wielded by a hostile foreign power may be the most effective and potentially devastating to the media in small markets, such as in countries in Central and Eastern Europe. In the words of Ondřej Fér, a former media manager and journalist, who considers advertising one of the most dangerous measures for influencing media content: “Despite the ethos of media being watchdogs of democracy, they still are business companies which follow economic gains. Revenues from advertising still represent the media’s major income and any disruption stemming from losing advertising can ruin the publisher.”<sup>35</sup>

China has been known for repeatedly pressuring businesses not to place advertisements in critical outlets, such as in Hong Kong’s *Apple Daily*.<sup>36</sup> The issue, again, is not hypothetical in Central Europe. In April 2020, the Chinese state-owned CITIC, which at that time held a stake in the publishing company Empresa Media, called options and swapped shares to acquire a controlling stake in Médea, one of the biggest media companies placing advertisements to the Czech media. The move was criticized based on various concerns. The case demonstrates the limits of other aforementioned measures. For example, even if the investment screening

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<sup>34</sup> Matej Šimalčík. Stories about Middle Kingdom: Case Study of the Slovak Perception of China and its Implications for the Security Policy. In Róbert Ondrejcsák, Peter Bátor, Richard Q. Turcsányi, Michal Mochťák (eds.): *Panorama of Global Security Environment 2017-2108: The Central European Perspective*, Publisher: STRATPOL, pp.343 - 360.

<sup>35</sup> Authors’ interview with Ondřej Fér, former media manager and journalist, May 22, 2020, Prague, Czech Republic.

<sup>36</sup> Takeshi Kihara, “Apple Daily’s feud with former Hong Kong chief proves costly”, *Nikkei Asian Review*, May 11, 2019, <https://asia.nikkei.com/Politics/Apple-Daily-s-feud-with-former-Hong-Kong-chief-proves-costly2>.



regulation was already in place in the Czech Republic, CITIC would effectively bypass it by calling options. The investment in this specific case would most probably not be seen as a new investment, triggering an investment screening process, but as an already concluded one.<sup>37</sup> The swap demonstrates that media regulations have to be a set of complex measures to affect all possible infringements on media freedom and plurality.

The (co)ownership of media in the Czech Republic by a Chinese state-owned company was indeed problematic, yet the ownership of an advertising company may present an even more serious threat to media freedom and plurality. Some already started speculating that the aim of the swap was to pressure the media - dependent on revenue from advertising - to report more positively about China.<sup>38</sup> Others conclude the swap was most likely motivated by an economic, rather than political rationale, yet admit it could serve to influence the media to be more prone to report on China in a more positive way should this be a requirement for receiving a favorable contract on advertising.

Indeed, influence over media via advertising was already visible in 2018, when Seznam, the biggest provider of online advertisements, enabled its clients to avoid their advertisement being seen on disinformation sites.<sup>39</sup> While this was clearly seen as a positive measure, it reveals how Seznam - through its system Sklik - influences the position and thus also the visibility of certain content. A more recent example is the case of the Czech state-owned railway company České dráhy which spent a record amount on advertising with the media company Mafra, which belongs to PM Babiš. Moreover, the unprecedented amount of more than 112 million CZK (seven times more than what the railway company spent on advertising through other media companies) since 2015 was sent to Mafra without a tender. An interview with a former high ranking manager of the state company revealed that it had to be the PM Babiš' company Mafra as it was "generally desirable" to employ it.<sup>40</sup> Advertising in the media can clearly move beyond „mere business“ and become yet another battlefield in the struggle to keep the media free, diverse and serving the democratic public.

Controlling the media agencies is not the only way to influence media content. China has been known to use advertorials as a way of spreading its messaging on various contentious issues. In Slovakia, the Chinese embassy purchased ad space in the magazine *Trend*, a major economic publication. This ad space was then used to publish an advertorial on the 2019 Hong Kong protests signed by the Chinese ambassador. The advertorial included a propaganda talking point on terrorist threats posed by the protestors or the influence of foreign secret services over the protest movement. From the pages of *Trend* the advertorial made its way into Chinese media where it served the purpose of domestic propaganda.<sup>41</sup>

When asked about how the propagandist advertorial made its way into the magazine, its editor-in-chief Tomáš Skřivánek claimed that the newsroom is not entitled to review the content of advertisements.

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<sup>37</sup> Authors' interview with journalists [anonymity requested], 2020, Prague, Czech Republic.

<sup>38</sup> Ondřej Neumann, "Čiňané s Tvrdíkem a Nejedlým v tichosti přepsali český mediální trh", *Hlídací pes*, April 17, 2020, <https://hlidacipes.org/ondrej-neumann-cinane-s-tvrdikem-a-nejedlym-v-tichosti-prepsali-cesky-medialni-trh/>.

<sup>39</sup> "Sklik využívá seznam dezinformačních webů zpracovaný Nadačním fondem nezávislé žurnalistiky", *Seznam*, January 10, 2020, <https://blog.seznam.cz/2020/01/sklik-vyuziva-seznam-dezinformacnich-webu-zpracovany-nadacnim-fondem-nezavisle-zurnalistiky/>.

<sup>40</sup> Markéta Chaloupská, "Bylo všeobecně žádoucí, aby to byla Mafra. České dráhy utratily za reklamu v médiích Agrofertu 112 milionů", *iRozhlas.cz*, May 20, 2020, [https://www.irozhlas.cz/zpravy-domov/bylo-vseobecne-zadouci-aby-byla-mafra-ceske-drahy-utratily-za-reklamu-v-mediich\\_2005200555\\_ace](https://www.irozhlas.cz/zpravy-domov/bylo-vseobecne-zadouci-aby-byla-mafra-ceske-drahy-utratily-za-reklamu-v-mediich_2005200555_ace).

<sup>41</sup> Matej Šimalčík, "Ako slovenské media uverjnili čínsku propagandu," *CEIAS*, August 27, 2019, <https://ceias.eu/sk/ako-slovenske-media-uverjnili-cinsku-propagandu/>.





## Depoliticization of broadcasting councils which oversee media

Broadcasting councils which oversee media should serve as guarantors of the plurality of media and of the independence of media content. Yet much of their performance depends on the ways in which council members are nominated and dismissed.

In the Czech Republic and Slovakia, broadcasting councils are tasked with controlling the plurality and independence of content produced by television and radio broadcasters, overseeing advertising content, awarding and dismissing broadcasting licenses, and, also upon request from the public, conducting investigations and sanctioning stations for infringements. Members of the council should be media experts, representing a plurality of views. The councils themselves have been conceived as independent regulatory authorities with a budget annually approved by the Parliament.

However, the regulatory authority is not in practice fully independent. In the Czech Republic, it is the Parliament which selects members of the council and can ask for dismissal of a member or the complete council, and the Prime Minister who nominates and dismisses the members on the request of the Parliament.<sup>42</sup> Under the law, broadcasting council members should be nonpartisan, which is reflected in e.g. restrictions on holding (some) positions in political parties or conducting business in media-related industries, including consultation and advisory.<sup>43</sup> Sadly in practice the membership of the broadcasting councils is heavily influenced by the political distribution of power in the Parliament and reflects political clientelism. This leads to a strange situation where the Czech political parties nominate members who should guarantee media freedom and plurality, including of the public television and radio, and who at the same time call for bombing the television or vilify the medium by labeling it as a “criminal organization”.<sup>44</sup>

The role of the broadcasting council is especially difficult in controlling public television and radio stations as, according to Vadim Petrov, member of the council, the authority lacks a clear methodology for measuring broadcasting, thus leaving the evaluation to a subjective interpretation by each member of the broadcasting council.<sup>45</sup>

Political clout over the council can lead to it turning a blind eye to infringements committed by politicians and their political backers. In Slovakia, the political nominees on the broadcasting council were particularly accommodating

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<sup>42</sup> In Slovakia, the nomination and dismissal procedure is in the authority of the National Council of the Slovak Republic (unicameral Parliament).

<sup>43</sup> The restrictions of the law dealing with the conflict of interests apply to the members of the Council on Radio and Television Broadcasting. “Act No. 159/2006 Coll. on conflict of interests”, Council on Radio and Television Broadcasting, March 16, 2006, <https://www.rtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/159-2006.pdf>. Similar obligations are imposed on the members of the Slovak Council on Broadcasting and Re-transmission by the Act no. 308/2000 Coll. on broadcasting and re-transmission. See <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/308/>.

<sup>44</sup> This nominee was not finally supported by the Parliament due to protests from the Czech public. Radek Dragoun, “Ve sněmovně sílí snahy o omezení nezávislých médií, říká šéf ČT po zvolení Jakla,” Aktuálně, April 2, 2019, <https://zpravy.aktualne.cz/domaci/ve-snemovne-sili-nazory-po-omezeni-nezavislych-medii-rika-se/r-bf3c6adc548211e9b6a9ac1f6b220ee8/>.

<sup>45</sup> Kateřina Perknerová, “Nejvíce stížností chodí na Českou televizi, říká hudebník a pedagog Vadim Petrov”, Deník, August 17, 2019, <https://moravskoslezsky.denik.cz/zpravy-z-ceska/rozhovor-vadim-petrov-nejvic-stiznosti-chodi-na-ceskou-televizi-20200816.html>.



to not investigating breaches of the media cross-ownership ban.<sup>46</sup> Also, while the council may not be an obvious avenue to be used by hostile foreign influence, the council's position can have a profound impact on freedom of media uncovering the practices of hostile foreign powers and the links between foreign and domestic actors.

If the aim of the regulation of radio and television broadcasting is to ensure media plurality and content independence, the regulatory authority cannot be - not only in the books, but also in practice - subordinated to politicians in general, and to the government in particular.

## **Slapping media with lawsuits: lawfare as a tool for coercing self-censorship**

Abusing the legal process to achieve illegitimate ends represents another tool used to influence the content of media through coerced censorship. This tactic has been dubbed "lawfare" or SLAPP suits (Strategic Lawsuit Against Public Participation).

Hostile foreign actors and their local interlocutors have on many occasions resorted to lawfare tactics to prevent media from reporting stories which could negatively impact their reputation or to delegitimizing the reporters after they already published the story. Facing a lengthy and resource-consuming trial, some journalists and activists may succumb to the threat resulting in imposed self-censorship.

In France, the local critics of Huawei were sued by the company after reporting on the company's alleged links to the Chinese government.<sup>47</sup> In Czech Republic, the Home Credit Group, owned by local oligarch Petr Kellner, issued a pre-litigation notice aimed at China-watching activists from Sinopsis for reporting on the company's business practices in China.<sup>48</sup> SLAPP suits are not unique to Chinese actors. In March 2019 it was reported that Shift News, an online investigative journalism platform, received an "urgent legal letter" from lawyers of Russian banker Ruben Vardanyan demanding the site remove an article on Vardanyan's involvement in the so called "Troika Laundromat" scandal which was uncovered by the Organized Crime and Corruption Reporting Project (OCCRP).<sup>49</sup>

To prevent abuse of the legal process, several countries have adopted anti-SLAPP laws.

The logic of the anti-SLAPP laws demands that the plaintiff (i.e. the party which filed the SLAPP suit) has to reasonably demonstrate that it is likely to prevail in the lawsuit and that information which was published has caused them substantial damage. Were the plaintiff not able to demonstrate fulfillment of these conditions, the court would not deal with the case, thereby saving the sued journalists or the publisher already strained financial resources which would otherwise be tied up in a lengthy lawsuit.

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<sup>46</sup> Dušan Mikušovič, "Maďarič chce sprisniť zákaz vlastníť noviny aj televíziu v čase, keď sa šepká o vstupe Penty do Markízy", Dennik N, October 3, 2017, <https://dennikn.sk/898477/mad-aric-chce-sprisnit-zakaz-vlastnit-noviny-aj-televiziu-v-case-ked-sa-sepka-o-vstupe-penty-do-markizy/>.

<sup>47</sup> Helene Fouquet, "Huawei Sues Critics in France Over Remarks on China State Ties", Bloomberg, November 22, 2019, <https://www.bloomberg.com/news/articles/2019-11-22/huawei-sues-critics-in-france-over-remarks-on-china-state-ties>.

<sup>48</sup> "Odpověď Projektu Sinopsis na předžalobní výzvu od společnosti Home Credit", Sinopsis, December 9, 2019, <https://sinopsis.cz/odpoved-projektu-sinopsis-na-predzalobni-vyzvu-od-spolecnosti-home-credit/>.

<sup>49</sup> "Russian banker threatens The Shift News with SLAPP lawsuit", The Shift News, [undated], <https://theshiftnews.com/2019/03/07/russian-banker-threatens-the-shift-news-with-slapp-lawsuit/>.



In the United States, 30 states and the District of Columbia have adopted some form of anti-SLAPP legislation.<sup>50</sup> Anti-SLAPP laws have also been adopted in Canada and Australia.<sup>51</sup> In the EU, lawmakers recognize lawfare as a major hindrance to the freedom of the media. In light of the murders of Daphne Caruana Galizia and Jan Kuciak, Maltese and Slovak investigative journalists respectively, the European Parliament adopted a resolution in which it called on “both the Commission and the Member States to present legislative or non-legislative proposals for the protection of journalists in the EU who are regularly subject to lawsuits intended to censor their work or intimidate them, including pan-European anti-SLAPP (Strategic Lawsuit Against Public Participation) rules.”<sup>52</sup> For the protection against lawfare to work properly, a unified approach by the whole EU is necessary. Different formulae to anti-SLAPP rules may induce forum shopping, the practice where plaintiffs file lawsuits in a jurisdiction with laws more favorable to their claims.

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<sup>50</sup> Austin Vining, Sarah Matthews, “Introduction to Anti-SLAPP laws”, Reporters Committee for the Freedom of the Press, <https://www.rcfp.org/introduction-anti-slapp-guide/>.

<sup>51</sup> Sofia Verza, “SLAPP: the background of Strategic Lawsuits Against Public Participation”, European Center for Press and Media Freedom, <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>.

<sup>52</sup> “European Parliament resolution of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová (2018/2628(RSP)”, Europran Parliament, April 19, 2018, [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0183\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0183_EN.html).



## Conclusion

Efforts to change the public discourse on the part of hostile foreign influence (specifically China) can be rather effective, given the fact that they have so far gone largely unnoticed by both European governments as well as society at large. The problem has not yet been acknowledged, quantified and properly responded to. Based on the MapInfluENCe data, it is evident that a change in media ownership structure can easily lead to the eradication of critical voices on authoritarian power and, together with (self)imposed censorship of journalists, can change the perception of the foreign power.

The first precondition to deal with the issue in a proportionate manner, is the mental shift of relevant stakeholders towards understanding the sources of vulnerability of the media and towards getting acquainted with legal mechanisms which could protect media from hostile influence, such as stricter provisions in investment screening mechanisms, treatment of the media as critical infrastructure, dealing with concentration of the media through antitrust regulation, bans on cross-ownership of media, providing protection against frivolous SLAPP lawsuits or ensuring that the broadcasting councils which oversee media are not politicized.

Further research of country-specific situations and available legal tools is the necessary first step in addressing the issue. Raising awareness of the risks stemming from allowing hostile foreign actors to influence the media should follow. At the EU level, it would be prudent to create or use already existing grant schemes and mechanisms to support journalists, who are already active in researching and publicizing hostile foreign influence operations. The EU should also be more proactive in strengthening its own, democratic narrative inside the Union, and in ensuring freedom of the media and journalists.

At the same time, it should be recognized that protecting the media from hostile foreign influence requires a level of eclecticism when adopting different safeguards. None of the measures listed in this report are a panacea for media freedom. Rather each of them tackles a different kind of media vulnerability. Due to a wide variety of vulnerabilities stemming from activities like investment into the media, control over ad revenues, or even the frivolous exercise of due process rights, protecting the media needs a multi-faceted approach.

The issue of protection of the media is partially, yet insufficiently covered by the EU investment screening mechanism. It cannot be considered an effective tool in protecting the European media as it only maps and informs on the scale of media acquisitions. Also national investment screening mechanisms in some EU member states which decided to draft their own legislation may not include the media. In the cases where the media are included - such as in the draft of the regulation in the Czech Republic - it is not protected sufficiently as the legislation e.g. focuses only on traditional media, completely leaving out online media.

To prevent abuse of advertising space for propaganda spreading, publishers should adopt safeguards which would allow editors to review advertising content for elements of propaganda and disinformation. This should be done especially when ad space is purchased by foreign governments or their interlocutors.

Experience from countries like the Czech Republic and Slovakia shows that politicized membership of bodies tasked with ensuring media freedom and plurality often leads to only pro-forma enforcement of regulations. Thus, another significant precondition for an effective response to hostile foreign influence on the media is ensuring that the very public bodies tasked with protecting the media are not susceptible to political pressure. The council also needs a clear methodology which would enable it to evaluate the broadcasting in an impartial and transparent way.











In order to prevent the abuse of legal procedures for coercing journalists by hostile foreign actors, democratic governments should consider adopting effective anti-SLAPP regulations which would impose additional burdens on the plaintiff whenever lawsuits concern journalists. In the EU, legal protection should be spearheaded by the Commission to harmonize protection levels across the union.



## Association for International Affairs (AMO)

AMO is a non-governmental not-for-profit organization founded in 1997 in Prague to promote research and education in the field of international relations. This leading Czech foreign policy think-tank owes no allegiance to any political party or to any ideology. It aims to encourage pro-active approach to foreign policy issues; provide impartial analysis of international affairs; and facilitate an open space for informed discussion.

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